

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD ACHER

Plaintiff,

v.

FUJITSU NETWORK COMMUNICATIONS,
INC.

Defendant.

NO. 03 Civ. 12099 (PBS)

AFFIDAVIT OF DOUGLAS MOORE

I, Douglas Moore, provide the following affidavit based on my personal knowledge unless otherwise stated.

1. I am currently employed as a Vice President of Eastern Region Sales for Fujitsu Network Communications, Inc. ("FNC"). I have been employed in this position for 2 years and have been employed by FNC for over 7 years. Donald Acher ("Acher") was in my reporting structure as a Sales Manager, and he had responsibility for the New England district.

2. As a Sales Manager, Acher could earn compensation pursuant to our Sales Incentive Plan ("Plan"). A true and correct copy of the Plan in effect at the time of Acher's termination from FNC is attached hereto as Exhibit A. As set forth therein, there were two types of commissions Acher could earn during his employment: one based on "Quota Attainment" ("QA") and one based on "Market Focus" ("MF").

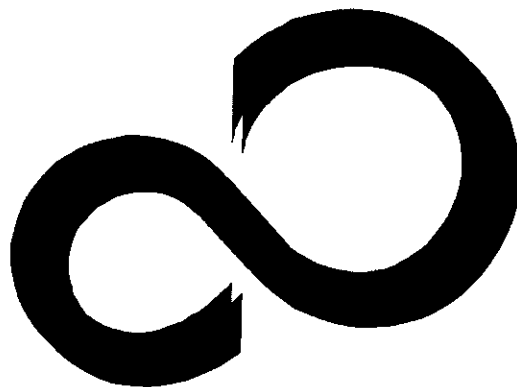
3. Under no circumstances was Acher entitled to earn commissions on sales made by FNC after his date of termination. According to the Plan, termination of employment meant that QA would be "pro-rated based on time with the company and based on performance as of last day worked. (See Exhibit A at 7) For MF, Acher could be paid "based on MF-eligible bookings generated from [the] beginning of [the] fiscal half to [the] last day worked. (Id.) In short, there was no ability to earn commissions based on sales made after employment terminated.

Signed under the penalties of perjury this 4th day of November, 2003.


Douglas Moore

11/4/03

Fujitsu Network Communications, Inc.



Sales Incentive Plan Field Sales Managers 1H2003

What's New for 1H2003

- ✓ A commission-based component, in addition to a quota-based component; commission rates vary by job; payouts are earned separately under each component and are not dependent upon each other;
- ✓ Quota assigned based on *individual* bookings only;
- ✓ Higher accelerators for above-quota performance and 25% threshold on quota-based component;
- ✓ Rate-based payout (instead of a percentage of base salary) for quota performance;
- ✓ No SPIF plan (except eSMI); and
- ✓ eSMI plan has been modified to add a cap on incentive generated from a single unit.

Understanding the Plan

As a member of the FNC sales team, you are eligible for the Sales Incentive Plan (SIP). Participants in the SIP include employees in the following positions:

- Sales Engineer (both Headquarters and Field positions)
- Sales Manager (both Headquarters and Field positions)
- Director - Sales (both Headquarters and Field positions)
- Senior Director – Sales Operations
- Vice President – Sales
- Senior Vice President - Sales

Understanding the Performance Measures

Bookings

Bookings are the net dollar value of all orders received within a given time period. This includes new orders, changes, cancellations, product returns and credit memos. Product returns are the net dollar value of all equipment physically returned to the Company. Product returns are considered negative bookings at the time they are physically returned to the Company and transacted back into inventory.

At the beginning of each half, bookings *quotas* are established for each plan participant. Quotas are established by management using criteria such as account plans, most recent forecasts, budget review plans, and past achievement records. Approval of quotas requires at least two levels of management approval (including a manager at the VP level or above).

Quotas established for individual sales team members should roll up to the VP level. For example, quotas for VPs are the sum of the quotas of their direct reports. Field Sales Engineers' quotas should add up to their Sales Manager's quota.

Quotas will not be adjusted due to price reductions. Completed or expected price reductions are considered in the budget/quota setting process.

Understanding Your Bookings Earnings Potential

There are two components to incentive compensation:

1. Quota Attainment (QA)
2. Market Focus (MF) Commission

Component #1 - Quota Attainment (QA)

At the beginning of the fiscal half, an individual bookings quota is assigned; credit towards quota is given for all products and services (including eSMI) bookings generated during the half. Based on the chart below, a dollar value is assigned to each performance level as indicated. Payout is determined by multiplying the quota attainment by the assigned rate for that performance level.

| | | | | | | | | |
|------------------------------------|------|-------|-------|-------|---------|---------|---------|-------|
| % of Quota Attained | 0-24 | 25-49 | 50-74 | 75-99 | 100-109 | 110-119 | 120-129 | 130+ |
| Rate per Point of Quota Attainment | \$0 | \$70 | \$100 | \$120 | \$140 | \$200 | \$300 | \$450 |

Example:

| | | | | | | | | |
|---------------------|-----|---------|---------|----------|----------|----------|----------|----------|
| % of Quota Attained | 0 | 40 | 60 | 85 | 100 | 115 | 125 | 135 |
| Payout | \$0 | \$2,800 | \$6,000 | \$10,200 | \$14,000 | \$23,000 | \$37,500 | \$60,750 |

Component #2 - Market Focus (MF) Commission

Each fiscal half, senior management will determine which products and/or services will be designated in order to drive increased market penetration efforts – *these may vary by account*. All products and/or services included in this component will be rewarded on a *commission* basis, and commission rates vary by job and territory. The commission rate for Field Sales Managers is:

.478% for each \$1 in commission-eligible bookings generated

Example:

\$3,000,000 products/services sold x .00478 = \$14,340

At the beginning of the fiscal half, you will be provided with a listing of products/services - specific to your account – that are eligible for the Market Focus category.

Provided below is an example of a payout matrix at different bookings achievement levels.

QUOTA: \$6.2 million

| | % OF QUOTA ACHIEVED | | | | | | |
|-------------------|---------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| | 25% | 50% | 75% | 100% | 110% | 120% | 130% |
| Bookings Achieved | 1,550,000 | 3,100,000 | 4,650,000 | 6,200,000 | 6,820,000 | 7,440,000 | 8,060,000 |
| 10% | 2,491 | 6,482 | 11,223 | 16,964 | 25,260 | 39,556 | 62,353 |
| 20% | 3,232 | 7,964 | 13,445 | 19,927 | 28,520 | 43,113 | 66,205 |
| 30% | 3,973 | 9,445 | 15,668 | 22,891 | 31,780 | 46,669 | 70,058 |
| 40% | 4,714 | 10,927 | 17,891 | 25,854 | 35,040 | 50,225 | 73,911 |
| 50% | 5,455 | 12,409 | 20,114 | 28,818 | 38,300 | 53,782 | 77,763 |
| 60% | 6,195 | 13,891 | 22,336 | 31,782 | 41,560 | 57,338 | 81,616 |
| 70% | 6,936 | 15,373 | 24,559 | 34,745 | 44,820 | 60,894 | 85,469 |
| 80% | 7,677 | 16,854 | 26,782 | 37,709 | 48,080 | 64,451 | 89,321 |
| 90% | 8,418 | 18,336 | 29,004 | 40,672 | 51,340 | 68,007 | 93,174 |
| 100% | 9,159 | 19,818 | 31,227 | 43,636 | 54,600 | 71,563 | 97,027 |

% OF BOOKINGS AS MKT FOCUS PRODS/SVCS

Other Sales Incentives

eSMI Incentive

The objective of this SPIF is to continue to reduce slow-moving and obsolete inventory.

At the end of each month, the incentive pool is calculated and determined based on two factors, (a) the floor price and (b) the premium above the floor price:

- For all SMI sales (equal to or greater than the floor price), the incentive pool is 3% of the floor price.
- For sales above the floor price, the incentive pool includes an escalating factor that is applied only to the premium (the difference between selling price and floor price); the escalating factor is defined below:

| For Sales Above the Floor Price <i>(the floor is equal to 100%)</i> | Incentive Factor <i>(applied to premium only)</i> |
|---|---|
| Equal to or greater than 110% but less than 120% | 5.0% |
| Equal to or greater than 120% but less than 130% | 6.5% |
| Equal to or greater than 130% but less than 140% | 7.5% |
| Equal to or greater than 140% but less than 150% | 10.0% |
| Equal to or greater than 150% but less than 160% | 12.5% |
| Equal to or greater than 160% but less than 170% | 15.0% |
| Equal to or greater than 170% but less than 180% | 17.5% |
| Equal to or greater than 180% but less than 190% | 20.0% |
| Equal to or greater than 190% but less than 200% | 22.5% |
| Equal to or greater than 200% | 25.0% |

The total incentive generated **from a single unit** will be capped at \$1,250 per unit.

Sales below the floor price require prior documented approval from Business Management and would likely require incremental sales of non-SMI equipment other business justification to justify/offset the lower price or. In this case, the incentive is 3% of the selling price for the qualified SMI parts. (Consider this case as a one-time reduction of the floor and thus the incentive is a straight 3% of the "floor.")

Sales incentives are calculated on qualified parts as a function of final selling price with respect to the floor price established for that part at the time of order acceptance. The floor prices are published as part of the qualified SMI listing. Not all "FNC SMI" parts are eligible for the incentive program; the parts eligible for this program are a sub-set of traditionally reported FNC SMI. Other sources of FNC SMI (the web, Operations, Order Administration, etc.) may not constitute an eligible SMI part.

Eligible SMI parts are updated the middle of each month after completion of the FNC manufacturing planning cycle. These parts are eligible SMI until the next update subject to quantity on hand (QOH) at time of order acceptance by FNC Order Administration. Should a parts' availability be depleted during the month QOH=0, it is no longer eligible for the SMI incentive program during that month. (Any additional incoming inventory that period would be based on planned needs and therefore not eligible.)

Incentive payouts are triggered on invoice date in SAP, not the booking date. The booking date is used to establish the validity of the qualified unit and the floor price. The payout is calculated and processed following the end of the monthly cycle in which the invoice was created.

Returns policy: Each salesperson is responsible for the incentives paid to him relating to subsequent customer returns for a period of 120 days from date of invoice.

eSMI earnings are capped at the amount equivalent to 100% quota attainment under the Quota Attainment component until at least 75% of quota is achieved. For example, Field Sales Managers can earn up to \$14,000 in eSMI incentive during 1H03 until they achieve 75% of their quota. Once 75% of quota is achieved, they can earn the remainder of the eSMI incentive.

Special Bookings Incentives

These incentives allow for multiple sales team members to get full or partial credit for an order or group of orders, or for a customer or group of customers. Provided below is a description of the special bookings incentives offered for 1H03:

- ◆ 4010 product bookings will be given double bookings credit on the MF commission component. For example: for every \$1 in 4010 bookings generated, you will receive \$2 credit on the commission component.

Account Transfers

In the event an account is transferred from one Field Sales Manager to another, the following rules will apply:

- ◆ If an account is transferred from one Field Sales Manager to another, then both would receive full commission on post-transfer sales – **only for the remainder of the fiscal half**. For example, Sales Manager A calls on an account and receives an order of \$100,000 (for purposes of illustration, assume that this order is all MF-eligible products). Then, the account is transferred to Sales Manager B, who then generates from that account an additional \$200,000 in bookings (again, assuming all are MF-eligible bookings) for the remainder of the fiscal half. Provided below is an illustration of how the incentive would be paid to each Sales Manager:

| | |
|-----------------|--|
| Sales Manager A | Receives .00478 commission on \$100,000, <i>plus</i> Receives \$100,000 credit against Quota Attainment, <i>plus</i> Receives .00478 commission on \$200,000 |
|-----------------|--|

| | |
|-----------------|--|
| Sales Manager B | Receives .00478 commission on \$200,000, <i>plus</i> Receives \$200,000 credit against Quota Attainment |
|-----------------|--|

- ◆ If a new customer lead is generated and passed from Field Sales Manager A to Field Sales Manager B (with no orders generated by Sales Manager A), then Sales Manager A would receive a lead generation bonus in the amount of \$750 gross, upon \$100,000 in bookings generated from the account during the first 6-month period after the lead is passed to Sales Manager B. At the discretion of Sales Manager B, Sales Manager A must set up an initial meeting with the customer.

Understanding the Procedures

At the end of each month, your actual performance against quota will be calculated. In addition, your commission will be calculated based on the amount of eligible products/services booked during the month. Based on these calculations, you may be eligible to receive a SIP payout. For the Quota Attainment component, your performance to date will be calculated against your fiscal half quota. Each month, your quota attainment payout will be re-calculated, less any amount you have already been paid for that component.

General Rules Regarding Eligibility

| | |
|--|---|
| NEW HIRES | QA component pro-rated based on date of hire; quota will be established within 30 days of hire. MF component paid based on MF-eligible bookings generated from date of hire to end of fiscal half. |
| TRANSFER/ PROMOTION INTO ELIGIBLE POSITION | QA component pro-rated based on date of transfer/promotion; quota will be established within 30 days of effective date. MF component paid based on MF-eligible bookings generated from date of transfer to end of fiscal half. |
| PROMOTIONS OR TRANSFERS FROM SALES TO ANOTHER SALES JOB | If you change positions during the fiscal half, your Director or VP will need to establish new SIP quota(s) for your new position. At the end of the half, your achievement of quota(s) will be calculated. The results will be prorated based on your length of time during the half in each position. |
| TRANSFER/ PROMOTION OUT OF ELIGIBLE POSITION | QA component pro-rated based on time in position and based on performance as of last day of eligibility. MF component paid based on MF-eligible bookings generated from beginning of fiscal half to transfer date. |
| LEAVES OF ABSENCE | If LOA is 30 days or less, then pro-rating rules do not apply; if LOA is more than 30 days, then the VP must review and determine whether or not to adjust the quota or to allow credit for MF-eligible bookings. |
| TERMINATION- VOLUNTARY, INVOLUNTARY, RIF | QA component pro-rated based on time with the company and based on performance as of last day worked. MF component paid based on MF-eligible bookings generated from beginning of fiscal half to last day worked. |

Plan Evaluation and Revisions

Sales Management, in conjunction with the Human Resources department, will review plan performance regularly.

These guidelines do not constitute a contract for employment or a guarantee of current or future employment with Fujitsu either expressed or implied. If there are any inconsistencies between these policies and state, local, or federal laws, the applicable law will prevail. The Company reserves the right to amend, clarify, change, or terminate these sales plans and policies at any time. If changes are made, the Company will endeavor to notify those who are affected by the change.